

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

KEVIN W. MALONE,

Petitioner,

v.

STATE OF NEBRASKA, and SCOTT R.  
FRAKES, Director of the Nebraska  
Department of Correctional Services,

Respondents.

**8:21CV432**

**ORDER UPON  
INITIAL REVIEW**

This matter is before the Court for initial review of petitioner Kevin W. Malone's ("Malone") Petition for Writ of Habeas Corpus ("petition") under 28 U.S.C. § 2254 (Filing No. 1). Under § 2254, "a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct an initial review of the petition and summarily dismiss it "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." Absent summary dismissal, the Court "must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the [Court] may order." *Id.*

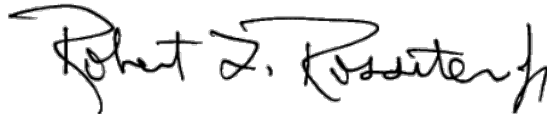
Having completed an initial review of Malone's petition and his supporting materials, the Court finds that summary dismissal is not required at this time. Based on that finding,

IT IS ORDERED:

1. The Clerk of Court shall serve copies of this order and the petition to the respondents and the Nebraska Attorney General.
2. On or before March 16, 2022, the respondents shall file a response consisting of either an answer to the petition on the merits of the claims and any affirmative defenses in the manner contemplated by Rule 5 of the Rules Governing § 2254 Cases, or a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. The Clerk of Court shall set a case-management deadline for this date.
3. Whether filing an answer or a motion for summary judgment, the respondents shall file (1) a pleading entitled “Designation of Relevant State Court Records,” describing in detail any records relevant to the petition, and (2) copies of all records described in that designation.
4. If Malone determines that the respondents’ designation is insufficient, he shall have ten days to file a motion specifically requesting additional documents and explaining why those documents are relevant to his claims.
5. Whether the respondents file an answer or a motion for summary judgment, Malone shall file any reply within thirty days after service of the respondents’ answer or motion.

Dated this 14th day of February 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
Chief United States District Judge